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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,037	10/23/2003	John Kevin Liles	2003-0131	6442

7590
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04/09/2007

EXAMINER

MARSH, STEVEN M

ART UNIT

PAPER NUMBER

3632

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/692,037

Applicant(s)

LILES, JOHN KEVIN

Examiner

Steven M. Marsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-46 is/are pending in the application.
- 4a) Of the above claim(s) 41,44 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-40, 43, and 46 is/are rejected.
- 7) ☒ Claim(s) 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the fifth office action for U.S. Application 10/692,037 for a Wire Support and Method of Making filed by John Kevin Liles on October 23, 2003. Claims 38-46 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 21, 2007 has been entered.

Election/Restrictions

Newly submitted claims 41, 44, and 45 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant is attempting to claim the combination of a wire support and sheet material, when only the subcombination of a wire support was previously claimed

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 41, 44, and 45 withdrawn from

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consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

Claims 38, 40, 43, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rieman in view of U.S. Patent 4,913,389 to McCracken. Rieman discloses a wire support with identical first and second one-piece wires (10 and 11). Each of the wires has a lower section (12 and 13), an upper section (15), and an intermediate section (between 12 and 14). The wires are twisted along the intermediate sections to form a plurality of helixes and spirally intertwined for providing an upright support, and the lower sections of the wires extend outwardly from the upright support, for insertion into the base surface to the mount the wire support. Each lower section has a lower region extending generally transverse to the upright support for enabling an operator to apply a force to the lower region, and each of the lower sections terminates in a lower distal area extending generally parallel to the upright supports, for facilitating insertion of the lower section into the base surface. The upper section of the wires extends outwardly from the upright support for engaging with the object to support the object relative to the base surface. The upper and lower ends of the intermediate section appear to have straight portions (right before the twists veer out into the upper and lower sections, respectively).

Rieman does not disclose an upper section that terminates in an upper distal area that extends generally parallel to the upright support for insertion into an object.

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McCracken disclose a stand configured to be driven into a surface for supporting an object relative to a surface. The stand has a lower section, an intermediate section that forms an upright support, and an upper section. The upper section has an upper region extending outwardly from the upright support and terminates in an upper distal area extending generally parallel to the upright support for supporting an object upright relative to the support surface. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided the upper section of Rieman, with portions that are parallel to the upright support as taught by McCracket, for the purpose of supporting an object upright relative to the support surface. Applicant claims limitations to the object/sheet material, but the object/sheet material is not positively recited in the claims, and therefore the limitations carry no patentable weight.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rieman in view of U.S. Patent 6,258,420 B1 to Lehman. Rieman does not disclose a flexible material ribbon extending transversely along the intermediate section and extending between the first and second wires. Lehman discloses twisted wires with flexible material ribbons (40) extending transversely between first and second wires for decorative purposes. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided ribbons between the wires of the stand taught by Rieman, as taught by Lehman, for the purpose of decorating the stand.

Allowable Subject Matter

Claim 42 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed February 21, 2007 have been fully considered but they are not persuasive. In response to applicant's arguments, the recitation "for supporting a sheet material from a base surface, the sheet material having a plurality of void areas" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to Applicant's argument that the prior art does not teach identical first and second one-piece wires, the Examiner disagrees, as wires (10 and 11 shown in figure 4) appear to be both identical and one-piece. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., inserting the upper distal area of the first and second wires into two of the plurality of void areas of the sheet material)

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are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

SM

Steven M. Marsh

April 2, 2007


ANITA KING
PRIMARY EXAMINER